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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions
The Honorable G.D. Morgan, Circuit Court Judge

Appellate Case No. 2023-000126

THE STATE,

Respondent,

v.

RANDY LEE FLOWER,

Appellant.

INITIAL BRIEF OF RESPONDENT

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II. Whether the trial court abused its discretion by refusing to quash indictments which provided adequate notice of the allegations.

STATEMENT OF THE CASE

A Greenville County grand jury indicted Appellant Randy Flower for 32 criminal charges alleging sexual abuse against his three daughters, including Criminal Sexual Conduct with a Minor (CSCM) in the first, second, and third degrees, Lewd Act with a Minor, Voyeurism, Contributing to the Delinquency of a Minor, and Distributing Obscene Material to a Minor. Flower moved to quash the indictments on the ground that they were temporally overbroad. Some of the indictments alleged conduct spanning seven or eight years. The Honorable G.D. Morgan, Circuit Court Judge, granted Flower's motion to quash eight indictments. (March 7 Tr.p.188–99).

The State re-indicted Flower with a greater number of indictments specifying one-year time spans over the same years. Judge Morgan denied Flower's motion to quash these indictments. (Tr.p.128). Flower proceeded to jury trial on January 9–13, 2023, before Judge Morgan. At the close of the State's case, the trial court granted Flower's motion for directed verdict as to two indictments for Contributing to the Delinquency of a Minor and three indictments for CSCM. (Tr.p.612–38). The State elected not to proceed on several indictments. Ultimately Flower was convicted of eight counts of CSCM in the First Degree, two counts of CSCM in the Second Degree, seven counts of Lewd Act, two counts of Voyeurism, five counts of Contributing to the Delinquency of a Minor, and one count of Disseminating Obscene Material. Flower was acquitted of 12 charges. (Tr.p.936–42). Flower was sentenced to 50 years' incarceration for 7 counts of CSCM first degree and 30 years

on the remaining CSCM first degree; 20 years for the CSCM second degree counts; 15 years for the Lewd Act counts; 10 years for Dissemination of Obscene Material; and time served on the remaining counts, with all the sentences to be served concurrently. (Sentencing sheets). This direct appeal follows.

STATEMENT OF FACTS

For more than a decade, Randy Flower sexually abused his three daughters. The victims eventually disclosed the abuse to their mother, and then to police. The victims were 20, 22, and 25 years old at the time of trial. (Tr.p.796).

IF was Flower's oldest daughter. She testified Flower sexually abused her from the time she was around three years old until she was a teenager. IF testified Flower would come into her bedroom at night and "stand there with his hand down his pants. And then at some point he would come over to me and he would touch me. He would touch my legs and caress me. And it would move on up to where he would touch me vaginally and sometimes anally." (Tr.p.236). IF testified Flower digitally penetrated her when she was less than five years old. (Tr.p.236). She testified Flower would sometimes digitally penetrate her during spanking. (Tr.p.220). IF testified her sisters shared her bedroom but did not recall if they were ever awake during the abuse. (Tr.p.236–37). She had at least five specific memories of that type of abuse happening in that room. (Tr.p.238).

IF testified Flower digitally penetrated her anus while potty training. She testified this occurred when she was three to four years old and remembered a specific incident on her third birthday. (Tr.p.232–34). IF testified Flower would watch her shower from the time she was five years old up until she was a teenager. (Tr.p.230). She testified Flower would often walk around the house with little or no clothes on. (Tr.p.222).

When IF was around seven years old, she moved to a different bedroom upstairs. (Tr.p.244–45). She testified the abuse continued in the upstairs bedroom:

"It would be the middle of the night when I would wake up and hear him coming through the living room and up the stairs. And he would be there." (Tr.p.248). Flower continued to digitally penetrate IF, but also "taught [her] to put [her] hand on his penis . . . ." (Tr.p.248). There were multiple instances of abuse, but IF vividly remembered two specific instances. (Tr.p.250–52).

When she was around nine, Flower, taught IF how to perform oral sex. (Tr.p.252). He also rubbed the top of her vagina with his penis. (Tr.p.252). Oral sex happened "often." (Tr.p.255). Flower told IF he was training her for when she was older and they could be together. (Tr.p.254). Flower told IF her mother was sick and "was going to die." (Tr.p.254). As a result, IF "was always really scared of her dying." (Tr.p.255). IF thought her mother "knew about all this." (Tr.p.254).

IF described another upstairs room called the "middle room." (Tr.p.256). Oral sex and digital penetration occurred in this room when IF was around ten or eleven. (Tr.p.257). She had two specific memories of abuse that occurred in this room. (Tr.p.258).

When IF was around eleven, she began sleeping in an "alcove" with a curtain as a door. (Tr.p.259). The same type of abuse continued there. (Tr.p.261). The abuse occurred "more often when [she] was in middle school," but "slowed as [she] got older." (Tr.p.262). IF attributed this to the fact that she reached puberty and started to gain weight. (Tr.p.262). IF described a continuing cycle where Flower would "treat [her] like [she] was special" leading up to an occasion of sexual abuse, but then become generally angry for long periods of time. (Tr.p.262–63). At times,

IF would crawl out a window onto the roof when she heard Flower coming up the stairs to avoid being molested. (Tr.p.264).

IF also described groping that occurred in the TV room downstairs. (Tr.p.272). Flower showed her pornography on his phone in that room. (Tr.p.273). This began when IF was around sixth grade. (Tr.p.276). On one occasion, Flower showed her pornography on his phone while a piano student was in the room during a lesson. (Tr.p.278). Flower was a doctoral student in piano and gave lessons for a living.

Flower gave IF alcohol. On one occasion, IF drank to the point that she passed out. The next morning, she woke up with vaginal pain. (Tr.p.275). IF testified Flower would use a back massager to molest her. (Tr.p.269). This happened "very often" when she was in middle school, around ages 11–13. (Tr.p.269). IF testified to an occasion where she hid in her closet while Flower masturbated onto her bed. (Tr.p.265).

Around age 14, IF stopped homeschooling and began going to a public school. She made friends and began to realize her family situation was not normal. She developed behavioral issues and attempted suicide. (Tr.p.279). IF began cutting herself, and still had visible scars at the time of trial. (Tr.p.281).

Flower left the family when IF was 15. (Tr.p.263). Flower and IF's mother divorced when she was 17, but IF's mother told her she must still treat her father with respect. (Tr.p.283). IF threatened to kill herself rather than visit Flower. (Tr.p.283). After the divorce, Flower moved to Spain. (Tr.p.284). IF began therapy

and finally told her mother about the abuse when she was 18 or 19 years old. (Tr.p.283). Flower returned to the United States in 2019. (Tr.p.287). IF testified she told her therapist about the sexual abuse in 2019. (Tr.p.287). IF reported the abuse to the police at this time. (Tr.p.287). IF testified she did not disclose the full extent of the abuse in her first statement to police. (Tr.p.288). On cross-examination, IF testified her mother was not in the room during her entire statement, but only for a few minutes. (Tr.p.297).

IF's younger sister, AF, testified that Flower sexually abused her as child as well. She was 22 years old at the time of trial, two and a half years younger than IF. (Tr.p.346–47). AF and her younger siblings grew up in the same household as IF, and AF described sexual abuse that overlapped temporally with Flower's abuse of AF.

AF described similar methods of abuse. AF described Flower digitally penetrating her vagina at a young age during potty training. (Tr.p.353). She remembered waking up to see Flower "standing in the door of the bedroom" when she was between two and four, and testified Flower digitally penetrated her vagina at night while she was in bed. (Tr.p.357–58). AF testified Flower would watch her shower when she was a young girl. (Tr.p.364). Flower gave her alcohol. (Tr.p.361). Like IF, she testified Flower would often walk around the house with little or no clothes on. (Tr.p.366). She testified to an occasion where she found a wet spot on her bed which she believed was Flower's semen. (Tr.p.368). She saw pornography on Flower's computer. (Tr.p.367).

Regarding her disclosure, AF testified she told a friend about inappropriate touching, but did not tell anyone that Flower digitally penetrated her until Flower returned from Spain. (Tr.p.375). She agreed she did not fully disclose all instances of abuse during her first meeting with police. (Tr.p.375).

The youngest of Flower's daughters, KF, was 20 years old at the time of trial. (Tr.p.501). She testified to similar abuse. She testified Flower would come into the bathroom to watch her shower while pretending to look for something. (Tr.p.509–10). Like her sisters, she testified Flower would often walk around the house with little to no clothing on. (Tr.p.511). Like her sisters, she testified to Flower's alcohol abuse. (Tr.p.506). She testified Flower showed her pornography. (Tr.p.514).

KF testified Flower digitally penetrated her and made her perform oral sex on him while showing her pornography. (Tr.p.517–18, 538). Like her sisters, she testified Flower digitally penetrated her during potty training when she was around three years old. (Tr.p.520). She testified Flower would come into her bedroom at night and digitally penetrate her beginning when she was five years old. (Tr.p.524). In this same bedroom, Flower made her perform oral sex on him and he performed oral sex on her. (Tr.p.525). KF testified Flower forced her to perform oral sex on him on multiple occasions when she was between five and nine years old. (Tr.p.530). Like IF, KF testified Flower told her this was "training." (Tr.p.525). KF testified to an occasion where Flower masturbated on her bed as she hid under the bed. (Tr.p.527).

KF testified that Flower "pushed his penis in [her] vagina." (Tr.p.528). KF recalled an incident that happened when she was eight years old, when Flower digitally penetrated and pressed his penis against her vagina while she gave him a massage. (Tr.p.535–37). She testified that between the ages of six and nine, Flower would use a vibrating back massager to molest her. (Tr.p.540). KF developed behavioral issues in middle school, including an eating disorder. (Tr.p.542–43).

Flower called the victims' mother as a witness to insinuate she influenced the victims to fabricate their story. The mother corroborated much of the victims' testimony, such as Flower giving the children alcohol and walking around the house with little or no clothes on. (Tr.p.770, 781). Flower testified and denied the allegations. (Tr.p.829).

ARGUMENT

I. The trial court correctly permitted the State to try Flower jointly for sex crimes against his three daughters where the abuse overlapped in time and place, was proved by common evidence, and the same evidence would have been admissible at separate trials under Rule 404(b).

The trial court correctly permitted the State to try Flower jointly for sex crimes against his three daughters because the abuse occurred in the same time frame, in the same location, and was of the same nature. There was common evidence between each case and Flower was not prejudiced because the same evidence would have been admissible under Rule 404(b) even if the cases were tried separately. This Court should affirm.

A. Standard of Review.

Decisions on severance and joinder are reviewed under a deferential standard. These rulings should not be disturbed unless an abuse of discretion is shown. An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Tallent, 430 S.C. 438, 445, 845 S.E.2d 508, 512 (Ct. App. 2020).

B. Discussion.

Charges can be joined in the same indictment and tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. State v. Beekman, 415 S.C. 632, 636, 785 S.E.2d 202, 204 (2016).

Joinder is proper when the crimes involve "connected transactions closely related in kind, place, and character." Id. at 637, 785 S.E.2d at 205.

These cases arose from the same chain of circumstances. All three victims were Flower's daughters living in the same home at the same time when Flower abused them in strikingly similar ways. These crimes occurred in the same rooms, on the same furniture, and Flower had the same relationship to each victim. See Beekman, 415 S.C. at 637–38, 785 S.E.2d at 205 ("Beekman's victims were siblings and the molestation occurred (1) at the same place—the victims' home; (2) over the same period of time—the eight-month period between November 2007 and July 2008; and (3) with the same modus operandi—Beekman taking advantage of the children's habit of watching television with him."). Defense counsel conceded at trial that the cases could be considered a single course of conduct. (Tr.p.122).

The charges were proved with common evidence. The testimony of each victim corroborated details of the other victims' testimony. Each victim described the specific rooms where the abuse occurred and the condition of the home. Each victim described Flower's general behavior as well as particular methods of abuse. IF and AF described Flower caressing their legs as young girls while they were watching TV in the TV room. (Tr.p.272, 361). Each victim testified it was normal to see Flower with "either no or minimal clothing." (Tr.p.222, 366, 511, 550). Each victim testified she saw pornography on Flower's computer, with IF and KF testifying that Flower deliberately showed them porn. (Tr.p.303, 367, 514). AF gave testimony that tended to corroborate IF's testimony that Flower masturbated

onto her bed, and KF also testified Flower masturbated while laying on her bed. (Tr.p.265, 368, 527). AF and KF corroborated IF's testimony that she harmed herself. (Tr.p.371, 541). AF also corroborated KF's testimony that she developed behavioral problems. (Tr.p.371). KF corroborated IF's testimony about Flower's anger issues. (Tr.p.504). Family friends described all three daughters' behavior and personalities. (Tr.p.445–459).

Flower asserts there "are no fact witnesses in common in the three cases." Brief of Appellant at 13. As shown above, that is not true. While the victims did not witness actual sexual abuse against their siblings, this Court has never required that all charges be proved by "completely identical evidence." Beekman, 415 S.C. at 638, 785 S.E.2d at 205 ("Beekman acknowledges that testimony from many of the same witnesses would be used to prove both charges . . . . Beekman advocates for a rule that strictly requires all charges be proved by completely identical evidence, a requirement nowhere to be found in our precedents requiring that the crimes be 'proved by the same evidence.'"); see also State v. Jones, 325 S.C. 310, 315, 479 S.E.2d 517, 520 (Ct. App. 1996) ("Contrary to Appellants' assertions, the offenses charged were of the same general nature involving allegations of a pattern of sexual abuse involving the two minor victims. Evidence was presented at trial that both victims had been taken to the same location and were present in the same motel room on an occasion of abuse."). The above-cited testimony was admissible corroboration testimony common to each case.

One fact in particular made the cases inseparable: the victims disclosed their abuse to law enforcement at the same time, on July 6, 2019. (Tr.p.378, 193, 300). The victims' mother made an appointment and brought them to the police station. This occurred years after the abuse had ended. Officer Melissa Woods with the Fountain Inn Police Department took statements from all three victims and testified at trial. (Tr.p.188).

Defense counsel throughout trial attacked the victims' testimony by suggesting the victims and their mother aligned their stories prior to their meeting with police or that their mother otherwise influenced their statements to police. (Tr.p.297, 377, 558, 563–64). Flower called the mother as a witness and questioned her about the victims' disclosure to police, suggesting she "orchestrated" the meeting. (Tr.p.709, 715, 723, 733, 739–48, 788). Flower asked the mother whether she "was coaching [her] daughter what to say" in the interview. (Tr.p.746). Flower also presented expert testimony to support his theory that the victims fabricated their testimony because they were influenced by their mother, who was an "alienating parent." (Tr.p.671–81).

The defense theorized the mother induced the victims to make up these allegations against their father. In a pretrial hearing, defense counsel explained that the victims' mother "sued her own father and, also, her mother . . . in a civil suit for sexual assault that was very analogous to this." (Tr.p.97). He directly related this to the circumstances of the victims' disclosures in this case: "The issue with this is when you listen to the recordings, [the mother] is in the interview room

with the police officer in these cases. And these children allude to this several times that their mother was sexually assaulted, maybe their father was going to do the same thing." (Tr.p.97).

In closing, counsel argued the mother was jealous and upset that Flower left the family. He described this as "the motive." (Tr.p.891). He again brought up the mother's presence during IF's initial disclosure to police. (Tr.p.890). He argued this caused the investigation to be "compromised from the beginning." (Tr.p.889–90).

Each of these cases had significantly delayed disclosure and no physical evidence. The victims' credibility was overwhelmingly the central issue in each of these cases. The circumstances of their disclosures were crucial to the jurors' ability to judge their credibility. Particularly where defense counsel argued the victims fabricated their stories at the direction of their mother, the fact that their disclosures happened on the same day, years after the crimes were committed, was crucial to the jury's ability to judge their credibility. The circumstances of the disclosures could not be separated from one another and were proved by the same evidence.

State v. McGaha presented a similar fact pattern. There, two siblings were molested by the same person, a household member. This Court explained the charges arose from the same chain of circumstances because the time periods of abuse overlapped, the children were of similar ages and the abuse was of similar duration, and McGaha had the same relationship to both children. State v. McGaha, 404 S.C. 289, 295, 744 S.E.2d 602, 605 (Ct. App. 2013) (Few, C.J.). The

Court further held the charges were proved by the same evidence by the same witnesses, even though the evidence did not overlap completely. Among other factors, the court noted both children disclosed their abuse simultaneously to the same person. Id. at 296, 744 S.E.2d at 605.

As in McGaha, these cases were properly joined. The Beekman factors are met, and it was proper for the State to choose to try these cases together. See State v. Perry, 430 S.C. 24, 37, 842 S.E.2d 654, 661 n.6 (2020) (noting State's "strategic choice" to join cases involving abuse of multiple victims by same defendant).

Prejudice.

Flower was not unfairly prejudiced by joinder because the allegations of each victim were admissible under Rule 404(b) to prove the other victims' allegations, and thus would have been admissible even if the cases were tried separately. See State v. Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). First, the evidence was admissible as a common scheme or plan. Flower used the same unique process to initiate sexual abuse against each victim beginning with digital penetration when they were around three years old. His method was especially unique: Flower molested each victim during "potty training." (Tr.p.232–34; 353; 520). The solicitor noted that "penetration when you start potty training, it's very unique. In the ten years I have been doing these cases, that has never come across my desk." (Tr.p.131). See Perry, 430 S.C. at 41, 842 S.E.2d at 663 ("There must be something in the defendant's criminal process that logically connects the 'other crimes' to the crime charged.").

There were further parallels. IF and KF both testified Flower told them he was "training" them while he molested them. (Tr.p.254, 525). Cf. State v. McClellan, 283 S.C. 389, 391, 323 S.E.2d 772, 773 (1984) (finding logical connection where defendant told victims he was "teaching them how to be with their husbands"). All three victims described giving Flower massages, which sometimes progressed into sexual abuse. (Tr.p.269, 365–66, 535–36). The victims all described a vibrating back massager, with KF and IF testifying Flower used the massager to molest them. (Tr.p.269, 366, 539). Flower's habit of walking around naked or barely clothed was a grooming tactic common to each case, and Flower gave all of his children alcohol. (Tr.p.275, 282, 361, 505–07, 539). Each victim testified Flower would watch them shower while pretending to look for something in the bathroom. (Tr.p.230, 364, 509). Flower used the same pattern of escalating sexual abuse to molest his daughters throughout their childhoods.

The other acts were also admissible to prove intent. Much of the alleged conduct—such as walking in while the girls were in the shower and touching their genitals during "potty training"—was claimed to have been unintentional. IF explained there was "always a reason" Flower gave when he came into the bathroom when she showered. (Tr.p.230, lines 21–22). "It was, oops, I forgot something, and he would come in. Or just checking to make sure you didn't fall, or that kind of thing when I was little." (Tr.p.228).

Regarding the digital penetration during potty training, IF explained: "He would stick his hand through the wet wipe inside my anus and wiggle it around and

clean me. And then he would remove the wet wipe and then he would continue with his fingers. It would start with his pinkie and it moved on from there. And he would just say he's checking me . . . ." (Tr.p.231). During the in camera hearing, defense counsel argued: "And I just want to say, under the penetration, I go back that the allegation is that this happened during the wiping of the children, that he would do this during wiping. I don't know if that's unusual. I think most parents wipe their children. I think the allegation that he was doing something nefarious and molesting them is something . . . they could come up with." (Tr.p.133). Likewise, during his cross-examination of KF, defense asked whether it was "common for parents to wipe their children." (Tr.p.552). Thus Flower's defense to these allegations was that there was no criminal intent. The testimony of each victim was admissible under 404(b) to prove Flower's conduct against the other victims.

The trial court correctly instructed the jury on the presumption of innocence and that they "must decide each indictment separately on the evidence and the law applicable to each one of them uninfluenced by your decision as to any other indictment." (Tr.p.899). The jury's verdicts further show they were not improperly influenced by joinder. The jury returned multiple not guilty verdicts related to each victim. Thus the jury conscientiously considered the evidence and properly applied the "guilty beyond a reasonable doubt" standard for each charge.

The cases were properly joined. The trial court thoroughly examined the applicable facts and law in a lengthy in camera hearing and thoughtfully considered

the issue overnight before ruling. (Tr.p.106–33). Under the abuse of discretion standard of review, this Court should affirm.

II. The trial court correctly refused to quash the indictments because they provided adequate notice of the allegations.

After originally indicting Flower with temporally broad indictments alleging conduct that occurred over seven- or eight-year periods, the State properly indicted Flower using one-year time frames alleging specific conduct as well as practicable. The trial court correctly refused to quash the amended indictments because they were adequate to enable Flower to prepare his defense. The indictments identified in Flower's brief—for contributing to the delinquency of a minor, voyeurism, and dissemination of obscene materials—while broader, were sufficient to provide Flower notice of the allegations. Further, Flower had actual notice of all of the allegations via discovery and discussions with the solicitor, and was not prejudiced. This Court should affirm.

A. Standard of review.

The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Tumbleston, 376 S.C. 90, 94, 654 S.E.2d 849, 851 (Ct. App. 2007).

B. Discussion.

When this case was first called to trial, Flower moved for the court to quash the indictments. Citing State v. Baker, 411 S.C. 583, 769 S.E. 2d 860 (2015), the

trial court held eight of the indictments were temporally overbroad. (March 7–8 Tr.p.199). Most of these indictments alleged sex crimes spanning a period of seven or eight years. The court then granted the State's motion for a continuance.

In response to the trial court's ruling, the solicitor obtained new indictments with narrower time frames spanning one-year periods. (Tr.p.137). These indictments still alleged specific acts, e.g. penile-vaginal penetration, oral sex, and digital penetration. (Tr.p.137; Indictments). The solicitor provided full discovery and met with defense counsel to discuss which acts were alleged in the various indictments. (Tr.p.134–39).

Defense counsel again moved to quash. He essentially argued that because there were no new facts alleged, the grand jury's returning a greater number of indictments covering the same years was improper. (Tr.p.139). Defense counsel agreed that the indictments need only be as specific as possible, but argued "there has to be some factual basis per each indictment." (Tr.p.142).

Dates of offenses.

Despite originally complaining the time periods were too broad, Flower now argues the more specific one-year time periods alleged in the amended indictments were "arbitrary." Brief of Appellant at 17. This argument is meritless.[1] Narrowing the indictments allowed the jury to consider more specific allegations and to judge

[1] In his brief, Flower does not clearly allege the trial court erred by refusing to quash the amended indictments. Flower asserts the trial court erred by refusing to quash "several" indictments, but does not argue that the amended indictments specifying one-year periods were improper. While this court should not entertain any arguments about indictments not specifically identified in the Brief of Appellant, the State has briefed the issue anyway out of an abundance of caution.

each piece of testimony individually. It furthered an important purpose of indictments by attaching jeopardy to alleged acts. And it allowed Flower to focus his defense on specific time frames.

Flower was not prejudiced because his defense did not depend on his ability to pinpoint the dates of the allegations. Flower sexually abused his daughters for their entire childhoods. Flower did not present an alibi, a justification for specificity in indictments the supreme court discussed in Baker. How could he? He was self-employed as a piano teacher and was home nearly all the time. An alibi defense was incompatible with the allegations that Flower repeatedly abused his daughters over many years in the home where they all lived. The defense he chose—complete denial, claiming his daughters fabricated the allegations at the direction of their mother—was not made any weaker by the structure of the indictments.

The indictments were as specific as practicable. It was not possible in 2023 to pinpoint the specific days in the 2010s when Flower forced KF to perform oral sex, or which nights in the early 2000s he came into IF's bedroom and digitally penetrated her vagina. The law recognizes that in CSCM cases with delayed disclosure, it will often not be possible to pinpoint specific dates when particular acts of abuse occurred. But this does mean the State cannot prosecute these crimes.

Where time is not an essential element of the offense, an indictment need not allege a specific date and time the offense allegedly occurred. State v. Tumbleston, 376 S.C. 90, 101, 654 S.E.2d 849, 855 (Ct. App. 2007); State v. Peak, 134 S.C. 329, 340, 133 S.E. 31 (1926) (holding in murder prosecution "[i]t is not necessary to prove

the precise day or even year laid in the indictment, except where time enters into the nature of the offense, or is made part of the description of it"). Numerous South Carolina cases affirm that a specific date and time need not be alleged in indictments alleging sexual abuse against a minor when circumstances justify a broader range. See Tumbleston; State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991); State v. Wingo, 304 S.C. 173, 403 S.E.2d 322 (Ct. App. 1991); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991); State v. Nicholson, 366 S.C. 568, 623 S.E.2d 100 (Ct. App. 2005); State v. Richey, 88 S.C. 239, 70 S.E. 729, 729 (1911) (carnal knowledge with a minor). "The State is not required to denote the precise day, or even year, of the accused conduct in an indictment charging criminal sexual conduct." Tumbleston, 376 S.C. at 101, 654 S.E.2d at 855.

"[I]ndictments for a sex crime that allege offenses occurred during a specified time period are sufficient when the circumstances of the case warrant considering an extended time frame." Id.; see also State v. Rayfield, 369 S.C. 106, 117, 631 S.E.2d 244, 250 (2006) (explaining "the Legislature recognized that crimes involving criminal sexual conduct fall within a unique category of offenses"). The youth of victims, the "stealth and repetitive nature" of sexual abuse, and the familiar phenomenon of delayed disclosure often make pinpoint accuracy in date and time allegations impossible, and "compels identification of the broader time period." Tumbleston, 376 S.C. at 102, 654 S.E.2d at 855; Perry, 410 S.C. at 213, 763 S.E.2d at 614 ("Where the victim is a child, such cases often involve continued offenses over an extended period of time or, as in this case, are not reported until sometime after

their commission. Thus, a specificity requirement would serve to prevent many prosecutions in child sexual abuse cases."); Wade, 306 S.C. at 84–85, 409 S.E.2d at 783, quoting State v. Rogers, 48 Idaho 567, 570, 283 P. 44, 45 (1929) ("It would be a very weak rule of law that would permit a man to ravish a fifteen year old girl ... and then say in effect, 'you cannot convict me of this crime, as you did not guess the right date.'").

The State broke the allegations into one-year periods to narrow the scope of each allegation. Throughout trial, the State took care to ask the victims when, to the best of their knowledge, each incident of abuse occurred. The jury acquitted Flower of some charges and convicted him of others.

Flower would complain no matter how the State indicted him. At trial, defense counsel argued it would be impossible to defend the charges even if the State alleged a specific date: "You know, what were you doing August 31, 2000? I assume most people don't know. My client certainly doesn't." (March 7–8 Tr.p.199).

State v. Baker is distinguishable. In Baker, the State originally indicted the defendant for four counts of lewd act and one count of CSC occurring during the summers of 2002, 2003, and 2004. Baker, 411 S.C. at 586, 769 S.E.2d at 862. However, only two weeks prior to trial, the State amended the lewd act indictments. Id. The amended indictments alleged the acts occurred between June 1, 1998 and September 1, 2004, a six year window. Id., 411 S.C. at 587, 769 S.E.2d at 862. Therefore, there was an element of surprise, the crucial ingredient in the prejudice prohibited by Wade. See Wade, 306 S.C. at 86, 409 S.E.2d at 784 (holding prejudice

may result if a defendant is "taken by surprise and hence unable to combat the charges against him").

There were no last-minute expansions of the allegations in this case. The one-year amended CSCM indictments are well within what this Court has approved in the past. By comparison, the appellate courts approved a two-year indictment in Wade and a three-year indictment in Tumbleston.

As to the indictments identified by Flower on page 20 of his brief—alleging voyeurism, dissemination of obscene material, and contributing to the delinquency of a minor—Flower was not prejudiced by the 4- and 5-year time periods identified. As with the CSCM indictments discussed above, time is not an element of these offenses and Flower's ability to defend the charges was not hindered. The trial court correctly refused to quash the indictments on this ground.

Particularity.

Flower identifies eight indictments he alleges were not factually specific enough, claiming the indictments were "mere recitations of the offense statute." Brief of Appellant at 21. The indictments Flower identifies—charging voyeurism, disseminating obscene materials, and contributing to the delinquency of a minor—are not mere recitations of the statutes. They provide a time and place and identify the victim of each crime. Further, it was undisputed that the State provided complete discovery, and that Flower had actual notice of the specific acts alleged. The indictments were adequate notice documents.

"The State is not required to plead its evidence in the indictment." State v. Thompson, 305 S.C. 496, 500, 409 S.E.2d 420, 423 (Ct. App. 1991). An indictment serves its purpose "if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution." State v. Wade, 306 S.C. 79, 82, 409 S.E.2d 780, 782 (1991); see also S.C. Code §17-19-20 ("Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, **charges the crime substantially in the language of the common law or of the statute prohibiting the crime** or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.") (emphasis added).

The specificity required in an indictment depends on the circumstances. "[T]he sufficiency of an indictment must be judged from a practical standpoint, with all of the circumstances of the particular case in mind." State v. Nicholson, 366 S.C. 568, 574, 623 S.E.2d 100, 103 (Ct. App. 2005). "The true test of the sufficiency of an indictment is not whether it could have been more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." State v. Ham, 259 S.C. 118, 129, 191 S.E.2d 13, 17 (1972). A defendant's right to reasonable notice is not infringed "provided the crime charged, however general the language

used, is yet so described as reasonably to inform the accused of the nature of the charge." Bartell v. United States, 227 U.S. 427, 432 (1913) (in prosecution for sending obscene materials through the mail, government was not required to describe obscene content in body of indictment when it identified recipient and date and place of mailing).

Whether Appellant had adequate notice to meet the charge is not to be judged based on the indictment alone. Rather, this Court must look to the record to determine whether Appellant had actual notice of the charges. State v. Shoemaker, 276 S.C. 86, 88, 275 S.E.2d 878, 879 (1981) (rejecting claim of inadequate notice where "the parties evidently engaged in voluntary, mutual discovery prior to the trial. Shoemaker therefore had actual knowledge of the State's case against her."); State v. Gunn, 313 S.C. 124, 128, 437 S.E.2d 75, 77–78 (1993) (rejecting claim of inadequate notice in State Grand Jury prosecution where defendant was "permitted to review, and to reproduce, the transcript of the testimony of the witnesses who appeared before the Grand Jury"); Franklin v. White, 803 F.2d 416, 417 (8th Cir. 1986) ("If a defendant is actually notified of the charge, due process notice requirements may be met, even if the [indictment] is deficient."); 5 Wayne R. LaFave et al, Criminal Procedure, § 19.3(c) (4th ed. 2017) ("[T]he presence of actual notice determines the appropriate remedy for a lack of specificity, as courts here look to the level of discovery obtained (or available), and ask whether the defendant was actually taken by surprise, and if so whether prejudice resulted."). Even prior to mandatory discovery in criminal cases, South Carolina courts focused on actual

notice, allowing a "general indictment" to be supplemented by an additional "writing." See State v. Napier, 63 S.C. 60, 41 S.E. 13, 15 (1902) (sufficient notice in barratry prosecution where "conformably to the practice in relation to general indictments, the defendant was served with a notice in writing of the particular act of barratry which would be relied on in behalf of the prosecution, and to these the evidence of the trial was confined"); State v. Chitty, 17 S.C.L. 379, 380 (S.C. App. L. & Eq. 1830) (same).

The eight indictments complained of were properly charged in the language of the statutes. Further, it was undisputed that the State provided complete discovery and met with defense counsel to discuss in detail the allegations against Flower. (Tr.p.138–39, 141–42). There was no surprise. Again, the trial court conducted a thoughtful and thorough analysis and applied the applicable law to the facts. (Tr.p.143–44). Under the abuse of discretion standard, this Court should affirm. See Morris v. BB&T Corp., 438 S.C. 582, 587, 885 S.E.2d 394, 397 (2023) (explaining "when a trial court's . . . thought process of applying sound principles of law to the court's view of the facts and circumstances is evident in the record . . . the appellate court will defer to the trial court's exercise of discretion, even when the judges on the appellate court might have made the decision differently.").

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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